**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.**

Writ Petition No. 1688 (S/S) of 2001
Old Number 46154 of 2000

1. Pratap Singh son of Sri Gusai Singh,
2. Manmohan Singh, son of Sri Luxman Singh.
3. Mani Ram, son of Sri Karan,
4. Prasad Singh, son of Sri Man Singh,
5. Chatur Singh, son of Sri Kheem Singh,
6. Girish Chandra Pathak, son of Sri Gauri Dutt Pathak,
7. Krishna Bahadu Rana, son of Sri Padam Singh Bahadur Rana,
8. Ghanshayam Singh Negi, son of Sri Ram Singh Negi,
9. Anand Singh Rawat, son of Sri Bishan Singh Rawat,
10. Pooran Singh, son of Sri Khushal Singh.

All residents of Forest Compound, Tarai West Forest Division, Ram Nagar, District – Nainital.

…….Petitioners.

Versus.

1. State of U.P. through Principal Secretary, Department of Forest, U.P. Shashan, Lucknow.
2. Principal Chief Conservator of Forest, U.P. 17, Rana Pratap Marg, Lucknow.
3. Conservator of Forest, Western Circle, U.P., Nainital.
4. Divisional Forest Officer, Tarai West, Forest Division, Ram Nagar, Nainital.
5. Divisional Forest Officer, Forest Division, Ram Nagar, Nainital
6. State of Uttaranchal, through Principal Secretary, Personal Department, Uttaranchal Shashan, Dehradun.
7. Principal Chief Conservator of Forest, Uttaranchal, Dehradun.

…….Respondents.

**Hon'ble M.M. Ghildiyal, J.:**

Heard Sri Manoj Tiwari, learned counsel for the petitioners learned standing counsel for the State of U.P. and learned standing counsel for the State of Uttaranchal.

Leaned counsel for both the parties are agree to decide the writ petition at its admission state itself.

Petitioners, who working as Cleaner in the forest department, have sought following prayers:

a. *to issue a writ, order or direction in the nature of certiorari for quashing the impugned order dated 29.08.2000(Annexure 12 to the writ petition) issued by the respondents no.3.*

b. *to issue a writ, order or direction in the nature of Mandamus commanding the respondents to consider and promote the petitioners to the post of Driver under Rule 9 (2) of the U.P. Forest Department Drivers Services Rules, 1981.*

c. *to declare Rule 5 of the U.P. Forest Department Drivers Service Rule, 1981 ultra vires, the Constitution of India in so far as it denies the right to be considered for promotion to the Tractor Cleaners serving in the Department.*

d. *to issue any other order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.*

e. *to award the cost of the petition in favour of the petitioners.*

After filing of writ petition, the petition, have moved amendment application and have prayer to add one more

prayer i.e. to issue a writ, order or direction in the nature of Mandamus commanding the respondents to consider and appoint the petitioners as Drivers against the available vacant posts in the department in the light of Government Order dated 09.06.2005 issued by respondent no. 6.

During the course of arguments, learned counsel for the petitioner has submitted that he does not want to press any prayer except the amended prayer. The submission of the petitioner is that they are continuously working for more than 25 years and the posts of drivers are vacant and they are entitled to be promoted to post of Drivers.

Counter affidavit has been filed by the respondents and the stand taken by them in the counter affidavit is that since there is no provision for promotion form the post of cleaner to Driver consequently, petitioners cannot be promoted to post of Drivers.

By way of Notification dated 06.06.2005 Uttaranchal Government Drivers Services Rules, 2003 were amended. Therefore, respondent no. 6 has issued an order dated 09.06.2005 wherein it is stated that any group D employee who possesses Driving License and who can drive and maintain the vehicle can be appointed as Driver against the available vacancies in the recruitment year ending on 30.06.2005.

Learned counsel for the petitioners has submitted that even in the absence of that amended Rules, persons have been promoted from the post of Cleaner to Driver in various department including the Forest Department. This Government Order was issued on 09.06.2005 and the benefit

of this Government Order was extended for the recruitment year 2004- 05 which expired on 30.06.2005.

Learned counsel for the petitioner has submitted that petitioners are eligible to be promoted to the post of Drivers in view of the fact they have possessed driving license and sufficient knowledge of vehicles and further, in view of the fact that they are working in the department for more than 25 years.

In view of the aforesaid circumstances, I think it just and proper to direct the respondents to consider the case of the petitioners, sympathetically, for promotion to the post of Drivers in accordance with law. In case, the posts are vacant and the petitioners are having driving license as well as experience of driving the vehicle, the case of the petitioners shall be considered within a period of six weeks form the date of production of certified copy of this order in accordance with law.

With this direction the writ petition is disposed of accordingly. No order as to costs.

**(M.M. Ghildiyal, J.)**

September 15, 2005
SKSharma